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**OFFICE OF PETITIONS**

In re Application of	:	
Pasek, et al.	:	
Application No. 10/663,504	:	ON PETITION
Filed: September 15, 2003	:	
Attorney Docket No. 07931.105001 C	:	

This is a decision on the petition filed on January 6, 2006, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a timely reply to the Notice of Non-Responsive Amendment mailed on September 20, 2005. This Notice set an extendable period for reply of one (1) month. No reply having been received, the above-identified application became abandoned on October 21, 2005. A Notice of Abandonment was mailed on December 16, 2005.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). The instant petition lacks item (1), the required reply.

As to item (1), the filing of an RCE is only appropriate when prosecution in an application is closed. See 37 CFR 1.114(a). Prosecution in an application is closed if the application is under appeal, or the last Office action is a final Office action, a Notice of Allowance, or an application that otherwise closes prosecution in the application (e.g. an Office action under Ex Parte Quayle). See MPEP 706.07(h)(I).

On renewed petition, petitioner must file a proper reply. The amendment filed on August 5, 2005 was previously determined to be non-responsive.

The \$790 fee for the RCE submitted has been refunded to Deposit Account No. 11-0980. The RCE will not be entered, although a copy will remain in the application file.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

By FAX: (571)273-8300  
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571)272-3207.



Cliff Congo  
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